IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2909 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PABUDANSINH VIJAYSINH RAJPUT

Versus

STATE OF GUJARAT

Appearance:

MR VH DESAI for Petitioners

MR UDAY BHATT AGP.for Respondent No. 1

RULE SERVED for Respondent No. 3

CORAM : MR.JUSTICE D.A.MEHTA

Date of decision: 15/06/2001

ORAL JUDGEMENT

1. The petitioners were appointed in the years 1971, 1969, 1969, 1969, 1971 and 1971 respectively and were posted in different SRP groups. The petitioners having

completed their services in the cadre of Constable for a period of five years became eligible to appear in the examination so as to become entitled to promotion to the rank of Section-II Head Constable. Accordingly, the petitioners appeared in examination in 1978 and were declared as successful candidates vide result declared on 13/3/1978.

2. The petitioners have stated that there is a consistent practice of the respondents that after the result of qualifying examination held under Rules 57 and 60 of SRPF Rules, 1969 the candidates who are declared to be successful are given the rank of Grade II Constable as and when vacancy arises. On the basis of the petitioners having cleared the qualifying examination a contention has been raised that the seniority list is required to be maintained for the purpose of promotion from the date of passing of such examination, and as the petitioners have cleared their examination in 1978, they must be put above the persons who have cleared such qualifying examination later in point of time. The petitioners have thus challenged the order of promotion dated 6/11/1986 (Annexure "C" to the petition) whereunder five persons have been promoted to the rank of Armed Grade-II Head Constable with effect from the date they assume such charge.

3. On behalf of the respondent State it has been submitted that the examination is a qualifying test which entitles the person to be taken into consideration for the purpose of promotion. However, the seniority which operates from the date of appointment remains unaltered and in light of such seniority those who have cleared the qualifying test are considered for promotion, regardless of the fact that they may have cleared such examination later in point of time. It is further submitted that in light of this consistent practice adopted by the respondents the grievance made by the petitioners is not valid. A further contention has been raised to the effect that the five persons who have been promoted vide order dated 6/11/1986 (Annexure "C") have not been joined as parties and as such the said fact must go against the petitioners.

4. Having heard both the sides, we find that this petition must fail. The qualifying test which is held by the respondents under the prescribed rules is merely an event which entitles a person to become eligible for being considered for promotion. The said examination and its clearance does not automatically result in a situation where immediately from that date a person would

be necessarily required to be promoted. The date of appointment viz. at the point of time when the person joins his service is an equally important factor to be taken into consideration and as stated the seniority list is maintained from such date.

5. The petitioners have even not been able to establish, as per their own say, that the persons who have been promoted under order of 6/11/1986 are the persons who have cleared their examination after the date when the petitioners were declared to be successful at the qualifying examination. At the same time, there is nothing on record to suggest that these five persons who were promoted by the aforesaid order, Annexure "C", were appointed prior to the date of appointment of the petitioners.

6. In view of these circumstances the petitioners may approach the respondent authorities by way of representation, if they are otherwise eligible on the basis of their position in the seniority list as they have already cleared their qualifying examination. Such representation may be made by the petitioners within a period of four weeks from today and the respondent authorities shall decide the same in accordance with law within a period of eight weeks from the date of receipt of such representation.

7. Rule is discharged with no order as to costs.

Sd/-
(D.A.Mehta, J)

m.m.bhatt